

Illinois Department of Transportation

FFY 2009

Federal Transit Administration

Overall DBE Goal

The Illinois Department of Transportation (Department or IDOT) has prepared this submission to the Federal Transit Authority (FTA) to describe the methodology used to establish the transit Disadvantaged Business Enterprise (DBE) goal mandated by 49 CFR Part 26 for its federally-assisted transit contracts. The Department relied on and followed the regulations and guidance provided concerning the implementation of the regulations. 49 CFR §26.45 requires a two-step process for setting the transit DBE goal that reflects the level of DBE participation on IDOT's contracts expected in the absence of discrimination. The first step is the calculation of a base figure for the relative availability of DBEs. The second step requires consideration of a possible adjustment of the base figure to reflect the effects of the DBE Program and the level of participation that would be expected "but for" the effects of past and current discrimination against DBEs. As further required by § 26.51(c), the Department submits a projection of the portion of the transit goal that it expects to meet through race-neutral means and the basis for the projection.

I. Methodology and Evidence

A. Step 1 Estimate of Relative Availability of DBEs

Step 1 is to determine the base figure for the relative availability of DBEs. IDOT utilized the number of DBEs in its certification database as its numerator and the total number of identifiable firms in the Census Bureau's County Business Patterns database as its denominator.¹

To determine the numerator, IDOT used the number of DBEs in FTA-related contracting, sorted by North American Industry Classification System (NAICS) Codes (#541330 - Engineering Services; #541810 - Advertising Agencies; #541320 - Landscape Architectural Services which includes Urban Planning Services; #485113 - Bus & Motor Vehicle Transit Systems; and #541850 - Display Advertising). 58 DBEs comprised the numerator.

To determine the denominator, IDOT used the Census Bureau's CBP database and the same NAICS codes as utilized for the numerator. 80,236 establishments comprised the denominator.

Therefore, the base figure estimate of DBE availability is 0.07%.

B. Step 2 Consideration of Adjustment to the Base Figure

Step 2 requires that the Department examine all evidence in its jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at the overall goal. Included among the types of evidence that must be considered are the current capacity of DBEs to perform work on the Department's federally-assisted contracts, as measured by the volume of work DBEs have performed in recent years, and evidence from disparity studies conducted anywhere within IDOT's jurisdiction, to the extent not already

¹ The IDOT Study and other evidence relied upon by IDOT and upheld by the courts did not include FTA-assisted contracts. See *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7th Cir. 2007),

accounted for in the base figure. The Department must also consider available evidence from related fields that affect the opportunities for DBEs to form, grow and compete, if available. These include, but are not limited to, statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in the Program, and data on employment, self-employment, education, training and union apprenticeship programs, to the extent relevant to the opportunities for DBEs to perform in the Program. The regulations caution that any adjustment to the base figure to account for the continuing effects of past discrimination or the effects of an ongoing DBE program must be based on “demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.” §26.45(d)(3).

1. Past DBE Utilization

IDOT considered the current capacity of DBEs to perform on its federally assisted contracts, measured by the volume of work DBEs have received in recent years. For FFYs 2005 - 2007, DBEs received 6.90% of IDOT's Division of Public Intermodal Transportation (DPIT) direct and subrecipient contract opportunities (\$596,782 of \$8,647,977). Following is the breakdown by year:

2005 - Total DPIT subrecipient contract opportunities, \$2,440,265

Direct DPIT awards - \$59,732

DBEs received 2.39% (\$59,732) of total DPIT direct and subrecipient contract opportunities (\$2,499,997)

2006 - Total DPIT subrecipient contract opportunities, \$2,515,737

Direct DPIT awards - \$807,479

DBEs received 16.6% (\$537,050) of total DPIT direct and subrecipient contract opportunities (\$3,323,216)

2007 - Total DPIT subrecipient contract opportunities, \$2,560,701

Direct DPIT awards - \$264,063

Total DPIT direct and subrecipient contract opportunities - \$2,824,764

DBEs received 0% (\$0) of total DPIT direct and subrecipient contract opportunities

2. Evidence from local disparity studies

There are no local disparity studies of the types of contracts involved in FTA-assisted contracts.

3. Statistical evidence of disparities

IDOT has no relevant data from related fields that affect the opportunities for DBEs to form, grow and compete on FTA-assisted contracts.

4. Step 2 adjustment evaluations

Given the lack of data relevant to a determination of whether an adjustment to the base figure to account for the effects of discrimination is supportable, IDOT did not adjust the base figure.

IDOT therefore adopts as its FFY 2009 goal the step 1 estimate of 0.07%.

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II. Projection of Race-Neutral vs. Race-Conscious Goal Attainment

The Department will meet the maximum feasible portion of its overall goal through race-neutral means. Ongoing initiatives seek to reduce discriminatory barriers, increase capacity and level the playing field for the participation of DBEs and other small contractors.

A. Race-neutral initiatives

1. Complaint procedures

The Department adopted a procedure to process complaints of discrimination in the operation of the Program and against contractors receiving IDOT contracts. This will ensure prompt, uniform and fair responses to allegations of unlawful conduct so that DBEs, non-DBEs and interested persons can have confidence in the integrity of IDOT's operations.

2. Prompt payment

The Department continues to enforce its prompt payment provisions and processes. It impresses upon its personnel and prime contractors the necessity and importance of meeting these requirements.

3. Outreach

The Department has implemented an extensive outreach program to attract additional DBE participation and to assist those businesses to become competitive in a race-neutral environment. It is further contacting firms identified as possible Program participants to encourage their applications and assist with meeting eligibility criteria.

4. Business development assistance

The Department retains a network of consultants to provide management, technical, technology and financial services to DBEs and other small businesses to increase their knowledge and competitiveness.

5. Networking

The Department sponsors networking sessions throughout the state to encourage cooperation and participation on major construction projects. It is also cooperating with a statewide network of 20 Small Business Development Centers administered by the U.S. Small Business Administration and the Illinois Department of Commerce and Economic Opportunity to provide information and training to DBEs and small businesses.

B. Estimate of Race-Neutral Participation

IDOT will meet the maximum feasible portion of its overall aspirational goal through these race-neutral measures.

To estimate the portions of the goal to be met through race-neutral and race-conscious measures, the Department evaluated past race-neutral DBE participation as defined in §26.51(a).

IDOT's race-neutral achievement for the period of FFY 2005 - 2007 was 6.90% [DBE participation (\$596,782) divided by total awards (\$8,647,977)].

| Year | Total FTA Contracting Opportunities | Race-neutral DBE Utilization |
|------|-------------------------------------|------------------------------|
| 2005 | \$2,499,997 | 2.39% (\$59,732) |
| 2006 | \$3,323,216 | 16.6% (\$537,050) |
| 2007 | \$2,824,764 | 0% (\$0) |

IDOT exceeded its DBE goals in FFY 2005 and 2006 by race-neutral measures alone and, although DPIT had zero DBE participation in FFY 2007, which IDOT considers an anomaly, it is anticipated that DPIT will meet its FFY 2009 goal of 0.07% solely through race-neutral measures, as mandated in § 26.51(f)(3).

III. Public Participation

To satisfy the public consultation requirements of the regulations, the Department provided copies of its proposed submission to numerous stakeholders who may have information concerning the availability of DBEs and non-DBEs, the effects of discrimination on opportunities for DBEs, and IDOT's efforts to establish a level playing field for DBE participation, for their review and comments. We will evaluate any comments received and make changes to our proposed goal, if warranted. We are also publishing a notice of our goal and request for comments in our usual media outlets.